

# MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

## INTEROFFICE COMMUNICATION

OPERATIONAL MEMO 111-17

April 30, 1999

TO: All Waste Management Division Supervisors

FROM: Jim Sygo, Chief, Waste Management Division

SUBJECT: Guidance and Procedures: "Fast Track" Enforcement for Violations of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

The purpose of this operational memo is to further the Waste Management Division's (WMD) ongoing efforts to improve the efficiency and effectiveness of the Hazardous Waste Program enforcement activities. This operational memo establishes guidance and procedures for WMD field and program unit staff's use of a simplified "fast track" administrative consent order (FTO) to expeditiously resolve cases where the number or types of hazardous waste violations are not serious enough to warrant referral to the WMD Enforcement Section but, nonetheless, require a formal response. These procedures are not intended to replace the existing escalated enforcement process but, rather, are to complement it and should improve the WMD's ability to bring about a timely and complete return to compliance.

Consistency will be critical to the successful use of these procedures, and close communications among WMD staff and staff of other affected Divisions will be required. Though these procedures rely heavily on field/ program unit supervisors and their staff for implementation, Enforcement Section staff will be available throughout the process to provide any support, advice, and/or assistance needed.

### I. Evaluation and Determination of Enforcement Response to Violation(s)

The WMD District and Hazardous Waste Program Section staff, in conjunction with their normal job responsibilities, shall continue to be responsible for the discovery of violations and for the initial enforcement response. In general, violations will be discovered through site inspections, file reviews, financial record reviews, permit application reviews, closure plan reviews, and other inspections or reviews. The initial enforcement response shall generally consist of a letter of warning or letter of deficiency and shall be signed by the appropriate District or Hazardous Waste Permit Section staff.

Violations that are not resolved after the first or second letter [if allowed pursuant to the U.S. Environmental Protection Agency's (U.S. EPA's) Resource Conservation and Recovery Act (RCRA) Enforcement Response Policy (ERP)] of warning or deficiency shall be evaluated for potential enforcement action. The Audit Privileged Immunity Act, the March 15, 1996 U.S. EPA Small Business Policy, ERP, and other pertinent policies

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should be considered in this evaluation. If appropriate, the case shall be referred to the Enforcement Section for escalated enforcement. All referrals shall be in accordance with Section II of Operational Memo 111-7, Revision 4, and any subsequent revision.

In the interest of providing a reasonably wide opportunity for the use of the fast track order, the following case criteria were developed to generally describe the circumstances where this approach would not be appropriate. Of course, a determination that a case may be a good candidate for fast track enforcement does not constitute a binding determination by the Michigan Department of Environmental Quality (MDEQ) that none of the above-referenced criteria were applicable. **Cases meeting any of the following criteria will typically NOT be good candidates for a fast track enforcement response.**

- When immediate response is required to mitigate an imminent and substantial threat to human health or the environment (e.g., emergency response to a large hazardous waste release, incompatible wastes stored together, etc.).
- When the facility is the subject of another escalated enforcement effort by WMD or other Division.
- Cases under investigation by the Office of Criminal Investigations (OCI), except where WMD's use of a fast track enforcement response, has been discussed with and approved by both CIS and the Enforcement Section.
- When the relief sought can be imposed pursuant to an existing consent order or judgment.
- When major relief involving extended compliance schedules and/or substantial WMD technical oversight is required (e.g., complex soil or hydrogeological surveys, remedial actions, design/construction activities requiring engineering reviews, etc.).
- When multi-media violations are identified as the result of a multi-media inspection or where non-compliance with Part 111/RCRA leads to significant multi-media violations.
- Permitted and interim status treatment, storage, and disposal (TSD) facilities with multiple violations.
- For non-notifying illegal treatment or disposal activity involving waste generated off-site.

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- Long-term violations which continue to occur despite repeated notification of violations.
- Chronic violations (e.g., an ongoing pattern of varying violations demonstrating disregard for the regulatory program).
- Cases where litigation has occurred or is likely to occur, or where the facility is under a prior WMD administrative or judicial order which has not been terminated.
- When owners/operators threaten MDEQ staff or the public.
- International waste shipments without prior notification.
- Where there are major closure problems, or corrective actions required without an existing order.
- Any facility previously the subject of an FTO for the same violations, or subjected to two previous orders for different violations.
- When the facility has not been previously advised of the violations in a written letter of warning.

## II. Procedures

Upon identification of a potential case meeting the criteria for a fast track enforcement action, the following procedure will be followed:

1. District/Program Unit staff that performed the inspection, review, or other investigation that revealed the non-compliance will informally consult with their colleagues, including senior Hazardous Waste Program staff, to discuss the facts of the case and obtain concurrence regarding the appropriateness of a fast track enforcement action.
2. The District or Program Unit Supervisor or designated staff will contact other WMD Districts/Sections or other DEQ divisions potentially affected by a WMD enforcement response (e.g., Surface Water Quality, Air Quality, Environmental Response, Land and Water Management Divisions, OCI, etc.) to inform them of WMD's potential enforcement action and identify inter-divisional issues that may need to be coordinated.

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3. The District or Program Unit Supervisor will contact the Enforcement Section Chief via phone or electronic mail to discuss the case and seek concurrence with the use of an FTO
4. Upon such concurrence, the Enforcement Section staff assigned will obtain a project number for the case and track its progress. The Enforcement Section Chief will notify the U.S. EPA of that case during the next U.S. EPA conference call, and in mid-year and year-end enforcement activity reports. District/Program Unit staff will utilize that project number on their timesheets so that WMD costs can be tracked for possible future recovery. District/Program staff will prepare an initial draft of the consent order and transmittal letter using the model documents ("Attachment 1; 111 FTO Boilerplate" and "Attachment 2; 111 FTO Letter 1") and calculate a proposed civil penalty, consistent with the 1990 RCRA Civil Penalty Policy and the penalty calculation guidance provided in Appendix A. District/Program Unit Staff will then provide the draft documents and penalty calculation to their supervisor for approval.
5. The District/Program Unit Supervisor will review the draft documents and penalty calculations for accuracy, completeness, and consistency with the model. The District or Program Unit Supervisor will transmit (using "Attachment 3; FTO Transmittal Memo 1") the draft documents and penalty calculation worksheets to the Enforcement Section for review and approval. District/Program Unit staff should maintain an electronic copy of the draft consent order and letter in the WMD network subdirectory accessible to the Enforcement Section staff assigned (Public.wm\$ on 'Envs0110\'\_shared\\_write\All Staff\Enforcement Section\') (Network Subdirectory). An electronic copy of other draft documents submitted to the Enforcement Section staff should also be maintained in this subdirectory. Enforcement Section staff will review and provide comment on the draft consent order, letter, and penalties, and will obtain a Payment I.D. number in no more than ten (10) business days from receipt of the documents. If Department of Attorney General (DAG) staff review is called for, Enforcement Section staff will coordinate that review as quickly as possible and advise the District/Program Unit Supervisor that additional review time may be required. Based on the Enforcement Section's review, the Enforcement Section Chief may determine that an FTO is no longer appropriate. The Enforcement Section Chief shall seek the concurrence of the District or Program Unit Supervisor and recommend further action(s), as necessary.
6. District/Program Unit staff will make any necessary changes to the draft consent order and letter in the Network Subdirectory, and ensure that the documents meet the "DEQ Correspondence Guidelines" (Guidelines). District/Program Unit staff will then advise the Enforcement Section staff by electronic mail message

that the changes to the documents have been made. The proposed consent order is then sent by the Enforcement Section to the respondent via Certified Mail/Return Receipt Requested using the transmittal letter signed by the Division Chief. In most cases, the proposed consent order should be sent to the individual generally responsible for the day-to-day management of the facility. District/Program Unit staff will prepare a brief write-up on the violations and proposed consent order and send a copy to the Enforcement Section for inclusion in the monthly activity report to the Division Chief. District/Program Unit staff will record the issuance of the proposed order in the Resource Conservation and Recovery Information System (RCRIS) database and notify Enforcement Section of that RCRIS entry.

7. District/Program Unit staff will negotiate the consent order with the respondent. Assistance and/or advice will be provided by Enforcement Section staff, as necessary. In doing so, staff may make reasonable compromises in the schedules of compliance and the nature of the relief sought (so long as the agreement does not violate Part 111 of the NREPA or its rules and a complete return to compliance is documented). In general, the requirements of the compliance program should be completed within 30 days or less. Additionally, the amount of civil penalties sought may be negotiated to some minor degree (refer to the penalty calculation guidance in Appendix A-F). Other than the schedules, relief provisions, and penalty amount, the consent order language is considered to be "boilerplate" and will not be subject to change except in extremely rare circumstances and then only upon review and approval by DAG staff. Provisions regarding the performance of Supplemental Environmental Projects (SEPs) in partial satisfaction of civil penalties will not be included in these consent orders. As a general rule, the period for negotiations will not exceed 90 days from issuance of the proposed consent order. This time limit must be clearly communicated, in writing, at the time the initial draft consent order is mailed to the respondent (paragraph 6 above). Failure to resolve the matter in that period of time should generally result in a referral for escalated enforcement and may expose the respondent to additional civil penalties. District/Program Unit staff are responsible for tracking case progress and notifying the District/Program Unit Supervisor and Enforcement Section Chief if settlement will not be achieved in the 90-day time frame.
8. Upon reaching tentative agreement with the respondent, District/Program Unit staff will make any necessary changes consistent with the tentative agreement and the Guidelines and send (using "Attachment 4; 111 FTO Transmittal Memo 2") the proposed final consent order to the Enforcement Section Chief for review and approval. An electronic copy of the proposed final consent order should be put in the subdirectory accessible to Enforcement Section staff.

Enforcement Section staff will review the proposed final consent order in no more than five (5) business days of receipt. If the Enforcement Section or the DAG review identifies any problems with the proposed settlement, Enforcement Section staff will assist District/Program Unit staff in resolving them. If DAG staff review is called for, Enforcement Section staff will coordinate the review as quickly as possible and advise the District/Program Unit staff that additional review time may be required.

9. Upon approval of the proposed settlement, District/Program Unit staff will prepare two originals of the approved consent order and send them to the respondent for signature (using "Attachment 5; 111 FTO Trans 2 Letter"), and instruct the respondent to return both signed originals to Enforcement Section staff. An electronic copy of the final approved consent order as transmitted to the respondent should be placed in the Network Subdirectory.
10. Upon receipt of both signed originals, Enforcement Section staff will obtain the signatures of the Assistant Attorney General and the Division Chief, return one original to District/Program Unit staff, and make and retain a copy for the Enforcement Section files.
11. Enforcement Section staff will send one of the executed originals to the respondent using the model letter ("Attachment 6; 111 FTO Trans 3 Letter"), noting the effective date of the consent order. District/Program Unit staff will prepare a compliance tracking outline using the established format ("Attachment 7; 111 FTO Tracking Outline" and any subsequent revision), and prepare a brief write-up on the settlement and send a copy to the Enforcement Section Chief to be included in the monthly activity report to the Division Chief. District/Program Unit staff will continue to monitor compliance with the consent order. Enforcement Section staff will track payment of required penalties, update case track files as necessary, and inform District/Program Unit staff of such payments.
12. Upon receipt of a request from the respondent for termination of the consent order, District/Program Unit staff will review the consent order and the respondent's compliance status, performing inspections to verify compliance, as necessary. Upon determining that termination of the consent order is appropriate, District/Program Unit staff will prepare a draft Notice of Termination (NOT) using the model document ("Attachment 8; 111 FTO Notice of Termination"), place the document in the Network Subdirectory, and send an electronic message to the Enforcement Section notifying staff that the draft NOT is ready for review and processing.

13. The Enforcement Section will review the draft NOT and, if appropriate, finalize the NOT and obtain the Division Chief's signature. The Enforcement Section will return the original NOT to District/Program Unit staff, retaining a copy for Enforcement Section files, and update the case files.
14. District/Program Unit staff will return the original NOT to the respondent using the model transmittal letter ("Attachment 9; 111 FTO Termination Letter"), retain a copy for their files and send a copy to the Enforcement Section. District/Program Unit staff will prepare a brief write-up on the termination and send a copy to the Enforcement Section Chief to be included in the monthly activity report to the Division Chief. Enforcement Section staff will update the case record to reflect the termination of the consent order. District/Program Unit staff will record the termination of the consent order (as a "return to compliance") in RCRIS and notify Enforcement Section of that RCRIS entry.

### III. Implementation and Evaluation

These procedures are available for immediate use by WMD staff. More specific training in certain aspects of the enforcement process (e.g., case documentation, penalty calculation, negotiation, etc.) are being developed to facilitate WMD staff's use of these procedures. In the meantime, WMD staff should begin to use these procedures where appropriate, with assistance from Enforcement Section as necessary.

A general schematic diagram (Attachment 10) and a checklist (Attachment 11) have been developed to assist WMD staff in implementing these procedures. As currently drafted, these procedures contemplate numerous checks and interactions involving the Enforcement Section. Although initially necessary to assure state-wide consistency, some of these steps may be modified or eliminated in the future once sufficient experience in the development and use of these consent orders is gained.

Any questions regarding these procedures should be directed to JoAnn Merrick, Chief, Enforcement Section, 517-373-7938.

Attachments

A handwritten signature in black ink, appearing to read "JoAnn Merrick", with a large, stylized loop at the bottom.

p:\enf\wordforms\fto\Attachment 1; 111 FTO Boilerplate

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT DIVISION

In the matter of administrative proceedings  
against **[COMPANY NAME]**, a corporation organized  
under the laws of the State of **[STATE OF INCORPORATION]**  
**- inquire at time of inspection or obtain from MDOC**  
**Corporations and Securities Bureau]**  
and doing business at **[STREET ADDRESS]**,  
City of **[CITY NAME]**, County of **[COUNTY NAME]**,  
State of Michigan

WMD Fast Track Order No. 111 -

EPA I.D. No. MID \_\_\_\_\_

CONSENT ORDER

This proceeding results from allegations specified in a Letter of Warning ("LOW") issued on **[DATE LOW ISSUED]** by the staff of the Department of Environmental Quality ("DEQ"). The DEQ alleges that **[COMPANY NAME]** ( the "Respondent"), a **[STATE OF INCORPORATION]** corporation, doing business at **[STREET ADDRESS]**, City of **[CITY NAME]**, County of **[COUNTY NAME]**, Michigan, is in violation of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101, et seq. ("NREPA"), and the administrative rules promulgated under Part 111. The Respondent and the DEQ agree to resolve the alleged violations set forth in the LOW by entry of this Consent Order.

I. STIPULATIONS

The Respondent and the DEQ stipulate as follows:



- 1.1 Pursuant to its authority under Section 105 and Part 111 of the NREPA, the DEQ has promulgated administrative rules pertinent to the identification, generation, treatment, storage, disposal, and transportation of hazardous wastes in Michigan. These rules are set forth in the Michigan Administrative Code ("MAC"), R 299.9101 - R 299.11107
- 1.2 On October 30, 1986, the State of Michigan was granted final authorization by the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 3006(b), the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. Section 6926(b), to administer a hazardous waste program in Michigan in lieu of the federal program, 40 CFR Part 271, 51 Federal Register 36804 (October 16, 1986), as updated by 54 Federal Register 7420 (February 21, 1989), by 54 Federal Register 48608 (November 24, 1989), as updated by 55 Federal Register 18112 (May 1, 1990), by 56 Federal Register 18517 (April 23, 1991), as updated by 57 Federal Register 3724 (January 31, 1992), by 58 Federal Register 51244 (October<sup>1</sup>, 1993), by 60 Federal Register 3095 (January 13, 1995), by 61 Federal Register 4742 (February 8, 1996), and by 62 Federal Register (November 14, 1997). Section 3008 of the RCRA, 42 U.S.C. Section 6928, provides that the U.S. EPA may enforce state regulations in those states authorized to administer a hazardous waste program.
- 1.3 The Respondent is a person as defined by Section 301(g) of the NREPA and R 299.9106(i). The Respondent owns and operates a facility at [STREET ADDRESS], [CITY], Michigan, that [GENERATES, TRANSPORTS, STORES, TREATS, DISPOSES] hazardous waste (the "Facility"). The Respondent is a [STATE OF INCORPORATION] corporation.
- 1.4 On [DATE], the Respondent filed a notification of hazardous waste activity for the Facility with the U.S. EPA pursuant to Section 3010 of the RCRA for its hazardous waste [GENERATION, TRANSPORTATION, STORAGE, TREATMENT, DISPOSAL] activities. The Respondent's EPA I.D. No. is MID \_\_\_\_\_.

- 1.5 The Director of the DEQ is authorized by Section 11151(1) of Part 111 to issue orders to comply. Accordingly, the Director has authority to issue and enter into this Consent Order to comply by consent with the Respondent.
- 1.6 The Respondent stipulates to the issuance and entry of this Consent Order and that entry of the Consent Order is proper and acceptable. This Consent Order shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Chief of the Waste Management Division ("WMD"), delegatee of the Director, pursuant to Section 301(b) of the NREPA.
- 1.7 The Respondent agrees to fully and strictly comply with all provisions of Part 111 of the NREPA, the administrative rules promulgated pursuant to Part 111, and all other applicable state and federal statutes.
- 1.8 The Respondent and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated.

**[USE THE FOLLOWING PARAGRAPH ONLY IF COMPLIANCE PROGRAM CONTAINS OBLIGATIONS TO SUBMIT WORKPLANS, REPORTS, OR OTHER DOCUMENTS FOR MDEQ REVIEW AND APPROVAL:]**

## **II. DEQ APPROVAL OF SUBMITTALS**

- 2.1 The Respondent shall assure that any work plan, proposal, or other document ("Workplan") required to be submitted by this Consent Order will be complete and technically adequate such that the Workplan meets any applicable statutory and regulatory requirements and the specific terms of this Consent Order when initially submitted. For any Workplan, report, or other document that is required to be submitted by the Respondent to the DEQ by this Consent Order, the following process and terms of approval shall apply. The DEQ may approve, disapprove, or approve with specified

modifications, any required Workplan. Upon DEQ approval, or approval with modifications, of a Workplan, such Workplan shall become a part of this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order. In the event that the DEQ approves a Workplan with modifications, the DEQ shall state each specific modification and the basis for each modification in writing. In the event that the DEQ disapproves a Workplan, the DEQ shall notify the Respondent of the specific reasons for the disapproval in writing. Within ten (10) business days of receipt of the DEQ's disapproval letter, the Respondent shall amend and submit a revised Workplan that addresses the reasons for the DEQ's disapproval unless the notice of disapproval specifies a longer period. Failure by the Respondent to submit an approvable Workplan within the ten (10) business day schedule shall subject the Respondent to the enforcement provisions of this Consent Order, including, but not limited to, the imposition of additional civil penalties. Any delays caused by the Respondent's failure to submit an approvable Workplan shall in no way affect the Respondent's responsibility to comply with any deadlines specified in this Consent Order.

### III. COMPLIANCE PROGRAM

- 3.1 The Respondent shall achieve and maintain compliance with the requirements specified below in accordance with the following schedule.

**[INSERT APPROPRIATE COMPLIANCE REQUIREMENTS HERE. EACH DIFFERENT ITEM SHOULD BE A SEPARATE LETTERED HEADING. THERE ARE TWO GENERAL TYPES OF COMPLIANCE PROGRAM REQUIREMENTS. THE FIRST WILL BE MOST OFTEN USED IN FAST TRACK CONSENT ORDERS AND IS WHERE THE RESPONDENT MUST SIMPLY DOCUMENT THAT COMPLIANCE HAS BEEN ACHIEVED BY A SPECIFIED DATE CERTAIN, AS IN THE FOLLOWING EXAMPLE:]**

#### **3.2 Container Labeling**

No later than thirty (30) days after the effective date of this Consent Order, the Respondent shall submit to the DEQ documentation sufficient to demonstrate that all hazardous waste containers in the Facility's hazardous waste accumulation area have been properly labeled in compliance with the requirements of 40 CFR 262.34 and R 299.9306(1).

ALTHOUGH LESS FREQUENTLY USED IN FAST-TRACK CONSENT ORDERS, THE OTHER TYPE OF REQUIREMENT IS WHERE THE RESPONDENT MUST SUBMIT A WORKPLAN FOR THE PERFORMANCE OF SPECIFIED ACTIVITIES TO THE DEQ FOR REVIEW AND APPROVAL AND THEN IMPLEMENT THAT WORKPLAN IN ACCORDANCE WITH DEQ APPROVAL, AS IN THE FOLLOWING EXAMPLE:

### 3.3 Contingency Plan

- (a) No later than ninety (90) days after entry of this Consent Order, the Respondent shall submit for DEQ review and approval, a revised Contingency Plan for the Facility in conformance with the requirements of MAC R 299.9607.
- (b) The DEQ may approve, disapprove, or approve with specified modifications, the revised Contingency Plan in accordance with Paragraph \_ [THE "DEQ APPROVAL OF SUBMITTALS" PARAGRAPH] above.
- (c) Upon receipt of written DEQ approval of the revised Contingency Plan, the Respondent shall implement the Revised Contingency Plan.]

THE DETERMINATION OF WHICH TYPE OF COMPLIANCE PROGRAM REQUIREMENT TO USE WILL GENERALLY BE BASED ON FACTORS LIKE THE NATURE AND COMPLEXITY OF THE VIOLATION, THE NATURE AND COMPLEXITY OF THE ACTIONS NECESSARY TO REGAIN COMPLIANCE, THE AMOUNT OF TIME NECESSARY TO REGAIN COMPLIANCE, AND THE ANTICIPATED DEGREE OF DEQ TECHNICAL OVERSIGHT THAT THE ACTIONS WILL REQUIRE. SINCE THE SECOND TYPE OF REQUIREMENT IS FAR MORE

**RESOURCE-INTENSIVE, IT SHOULD ONLY BE USED IN THOSE SITUATIONS WHERE THE  
ADDITIONAL DEQ OVERSIGHT IS NECESSARY.**

#### IV. REPORTING

- 4.1 The Respondent shall submit all items required in Section III to the **[DISTRICT  
SUPERVISOR, PROGRAM UNIT SUPERVISOR, OR DESIGNATED STAFF]**, WMD,  
DEQ, **[DISTRICT OFFICE NAME]**, **[STREET ADDRESS]**, **[CITY]**, Michigan **[ZIP CODE]**.

The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

#### V. RETENTION OF RECORDS

- 5.1 Upon request by an authorized representative of the DEQ, the Respondent shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 111 of the NREPA, or its administrative rules. All such documents shall be retained at the Facility for at least a period of three (3) years from the date of generation of the record, unless a longer period of record retention is required by Part 111, the RCRA, or their rules.

#### VI. RIGHT OF ENTRY

- 6.1 The Respondent shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the Facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA, and its rules, or any other applicable statutory provision.

#### VII. FINES AND PENALTIES

[THERE ARE TWO TYPES OF PENALTY PAYMENT SCHEDULES. THE ONE MOST COMMONLY USED IS THE FOLLOWING:

7.1 No later than thirty (30) days after entry of this Consent Order, the Respondent shall pay the sum of \_\_\_\_\_ to the General Fund of the State of Michigan, by check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, 300 South Washington Square, Suite 457, Lansing, Michigan 48909-8157, in settlement of the DEQ's claim for a civil fine arising from the violations alleged in the above-referenced LOWs. To ensure proper credit, all payments made pursuant to this Consent Order must include the Payment Identification Number WMD \_\_\_\_\_.

THE OTHER APPROACH IS A TIME PAYMENT ARRANGEMENT, AS IN THE FOLLOWING EXAMPLE:

7.1 Within thirty (30) days after entry of this Consent Order, the Respondent shall pay the sum of \_\_\_\_\_ to the general fund of the State of Michigan, by check made payable to the "State of Michigan" and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, 300 South Washington Square, Suite 457, Lansing, Michigan 48909-8157, in settlement of the DEQ's claim for an initial civil fine arising from the violations alleged in the above-referenced LOWs. A final civil fine in settlement of the DEQ's claim for payment of \$ \_\_\_\_\_ shall be made no later than \_\_\_\_\_ [DATE, typically no more than six months from entry], in the same manner described above. To ensure proper credit, all payments made pursuant to this Consent Order must include the Payment Identification Number WMD \_\_\_\_\_.

THIS TYPE OF LANGUAGE SHOULD ONLY BE USED IN SITUATIONS WHERE THE RESPONDENT HAS DEMONSTRATED THAT LEGITIMATE FINANCIAL CIRCUMSTANCES PREVENT PAYMENT OF THE CIVIL PENALTY IN A SINGLE INSTALLMENT.]

- 7.2 To ensure timely payment of the civil fine set forth in paragraph 7.1 above, the Respondent shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(6), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full. Payment of an interest penalty by the Respondent shall be made to the "State of Michigan" in accordance with paragraph 7.1 above.
- 7.3 The Respondent agrees not to contest the legality of the civil fine or any interest paid pursuant to paragraphs 7.1 and 7.2 above.

#### VIII. GENERAL PROVISIONS

- 8.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Respondent to comply with the requirements of the NREPA, and its rules.
- 8.2 Notwithstanding any other provision of this Consent Order, an enforcement action may be brought by the DEQ pursuant to Part 111 of the NREPA or other statutory authority where the generation, storage, transportation, treatment, or disposal of hazardous waste at the Respondent's Facility may present an imminent and substantial hazard to the health of persons or to the natural resources or is endangering or causing damage to the public health or the environment.
- 8.3 The DEQ and the Respondent consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 111 of the NREPA, MCL 324.11101 et seq.
- 8.4 This Consent Order in no way affects the Respondent's responsibility to comply with any other applicable state, federal, or local laws or regulations, including, without limitation,

any corrective action or similar requirements applicable to the Respondent's Facility pursuant to Part 111 of the NREPA, the RCRA, and their rules.

- 8.5 Nothing in this Consent Order is or shall be considered to affect any liability the Respondent may have for natural resource damages caused by the Respondent's ownership and/or operation of the Facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 8.6 The provisions of this Consent Order shall apply to and be binding upon the parties to this action; their officers, agents, servants, employees, successors and assigns; and on those persons in active concert or participation with them who receive actual notice of the Consent Order prior to its termination. The Respondent shall give notice of this Consent Order to any prospective successor in interest prior to transfer of ownership and shall notify the DEQ of such proposed sale or transfer.

#### IX. TERMINATION

- 9.1 This Consent Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the Chief of the WMD. The Respondent may request that the Chief issue a written Notice of Termination at any time after achieving compliance with this Consent Order. Such a request shall consist of a written certification that the Respondent has fully complied with all of the requirements of this Consent Order and payment of any fines and penalties required in this Consent Order. Specifically, this certification shall include:
- (a) the date of compliance with each provision of the compliance program in Section \_\_\_ and the date that any fines or penalties were paid;
  - (b) a statement that all required information has been reported to the District Supervisor; and



ATTACHMENT 1

- (c) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the Facility.

Additional relevant information may also be requested by the Chief of the WMD.

SIGNATORIES

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

[RESPONDENT COMPANY NAME]

Department of Environmental Quality

Russell J. Harding  
Director

By: \_\_\_\_\_

[NAME]

[TITLE]

By: \_\_\_\_\_

Jim Sygo, Chief  
Waste Management Division

Date: \_\_\_\_\_, 1999

Date: \_\_\_\_\_, 1999

APPROVED AS TO FORM:

Jennifer M. Granholm  
Attorney General

\_\_\_\_\_  
Natural Resources Division  
3<sup>rd</sup> Floor, Knapps Centre  
Lansing, Michigan 48909

Date: \_\_\_\_\_

Attachment 2; 111 FTO Letter 1

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

{FACILITY OWNER/OPERATOR OR REPRESENTATIVE}  
{OWNER/OPERATOR NAME}  
{MAILING ADDRESS}

Dear {\_\_\_\_\_}:

SUBJECT: Letter of Warning, Proposed Consent Order  
[COMPANY NAME, LOCATION]  
MID \_\_\_\_\_

Enclosed please find [(a copy) (copies) of the (Letter(s) of Warning) (Notice(s) of Deficiency) [SPECIFY THE APPROPRIATE DOCUMENT(S) THAT INITIALLY NOTIFY THE COMPANY OF THE ITEMS OF NONCOMPLIANCE COVERED BY THE FAST TRACK CONSENT ORDER] issued by staff of the Waste Management Division, DISTRICT OFFICE/SECTION NAME], on [DATE(S)] and a proposed Consent Order that specifies the requirements necessary to return [COMPANY NAME] to compliance. The SPECIFY TYPE OF DOCUMENT(S) CITED ABOVE state[s] the specific requirements of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.11101 - 324.11152; Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, 42 USC 6901 et seq., and the rules promulgated under these statutes, which the Michigan Department of Environmental Quality (DEQ) alleges have been violated by [COMPANY NAME] at the above-referenced facility.

In light of the nature of the violations, the DEQ proposes entry of the enclosed Consent Order as an appropriate and expeditious means of resolving [this issue] [these issues]. Failure to resolve this matter by entry of the consent order within 90 days of receipt of this letter may result in escalation of this matter for additional enforcement. If this Consent Order is acceptable to [COMPANY NAME], please sign and return both original documents to Ms. JoAnn Merrick, Chief, Enforcement Section, Waste Management Division, Department of Environmental Quality, P.O. Box 30241, Lansing, Michigan 48909, by no later than ten days after receipt of this letter. Upon receipt of the signed documents, I will sign the documents for the DEQ and return one fully executed original document to you for your records. The Consent Order becomes effective on the date that I sign it, and the civil penalty must be paid by no later than 30 days after that date.

Alternatively, you are offered an opportunity to confer with the staff of the DEQ regarding the [SPECIFY TYPE OF DOCUMENT(S) CITED ABOVE] and proposed Consent Order on [DATE (NOT LATER THAN 15 - 20 DAYS AFTER COMPANY'S EXPECTED RECEIPT OF THIS LETTER)] at [TIME] in the [CONFERENCE ROOM \_\_\_, BUILDING NAME, ADDRESS, CITY]

You may also submit a written response to the [SPECIFY TYPE OF DOCUMENT(S) REFERENCED ABOVE] and proposed Consent Order at any time prior to, during, or in lieu of,

the conference. The written response should state whether representatives of **[COMPANY NAME]** are planning to attend the conference or if the submittal is being made in lieu of the conference. If a written response to this letter is not received from **[COMPANY NAME]** by the date of the conference, or if **[COMPANY NAME]** does not attend the conference, the DEQ will initiate further enforcement actions.

The contact person for this matter is **[DISTRICT/UNIT SUPERVISOR, DISTRICT/UNIT NAME]**, Waste Management Division. Please contact **[him/her]** at \_\_\_\_-\_\_\_\_-\_\_\_\_ if you have any questions.

Sincerely,

Jim Sygo, Chief  
Waste Management Division  
517-373-9523

Enclosures

cc: Mr. Frank Ruswick, DEQ

Ms JoAnn Merrick, DEQ

cc/enc: **{OWNER/OPERATOR REPRESENTATIVE TO WHOM CORRESPONDENCE IS ROUTINELY  
DIRECTED IF DIFFERENT THAN ADDRESSEE}**

**{DISTRICT/UNIT SUPERVISOR}**

**{DISTRICT/UNIT STAFF}**

**{OTHER WMD OR DEQ STAFF}**

**{FILE}**

Attachment 3; 111 FTO Transmittal Memo 1

TO: JoAnn Merrick, Chief  
Enforcement Section  
Waste Management Division

FROM: [DISTRICT/UNIT SUPERVISOR]  
[DISTRICT/UNIT NAME]  
Waste Management Division

SUBJECT: Transmittal of Draft Consent Order for Review  
[COMPANY NAME, LOCATION]  
MID \_\_\_\_ - \_\_\_\_ - \_\_\_\_

The above-referenced respondent has been selected for a fast track enforcement action. This facility was the subject of our [TELEPHONE/E-MAIL] discussion on [DATE]. Please review the enclosed draft Consent Order, transmittal letter, and civil penalty calculations proposed to be issued to [COMPANY NAME] to resolve violations of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and provide your comments or approval by [DATE (10 BUSINESS DAYS)].

If any issues require further review by Department of Attorney General staff, please have Enforcement Section staff coordinate that review.

If you have any questions regarding this case, please contact [STAFF NAME] at \_\_\_\_ - \_\_\_\_ - \_\_\_\_ or me at \_\_\_\_ - \_\_\_\_ - \_\_\_\_.

Enclosure

cc: [DISTRICT/UNIT STAFF]  
[FILE]

Attachment 4; 111 FTO Transmittal Memo 2

TO: JoAnn Merrick, Chief  
Enforcement Section  
Waste Management Division

FROM: [DISTRICT/UNIT SUPERVISOR]  
[DISTRICT/UNIT NAME]  
Waste Management Division

SUBJECT: Transmittal of Proposed Final Consent Order for Review  
[COMPANY NAME, LOCATION]  
MID \_\_\_\_ - \_\_\_\_ - \_\_\_\_

[DISTRICT/UNIT NAME] staff have completed negotiations of a fast track Consent Order with [COMPANY NAME]. Please review the attached proposed final Consent Order with [COMPANY NAME] and provide your comments or approval by [DATE (5 BUSINESS DAYS)]. If any issues require further review by Department of Attorney General staff, please have Enforcement Section staff coordinate that review.

Upon receipt of your approval, [DISTRICT/UNIT NAME] staff will transmit the final Consent Order to [COMPANY NAME] for their signature. If you have any questions regarding this case, please contact me at \_\_\_\_ - \_\_\_\_ - \_\_\_\_.

Attachments

cc: [DISTRICT/UNIT STAFF]  
[FILE]

Attachment 5; 111 FTO Trans 2 Letter

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

COMPANY NAME  
COMPANY REPRESENTATIVE  
COMPANY ADDRESS  
CITY, MICHIGAN ZIP

Dear :

SUBJECT: [COMPANY NAME/LOCATION]  
MID \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Enclosed please find two unsigned originals of the Consent Order for the resolution of the matter[s] documented on correspondence dated [DATE(S)], pursuant to Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The Consent Order has been revised as agreed to by you on [DATE]. Please sign both copies of the original documents and return them to: Chief, Enforcement Section, Waste Management Division, Department of Environmental Quality, P.O. Box 30241, Lansing, Michigan 48909-7741, and he/she will secure the Department of Environmental Quality's signature and return a fully executed original to you.

If you have any questions, please contact [STAFF NAME], at \_\_\_\_ - \_\_\_\_ - \_\_\_\_, or you may contact me.

Sincerely,

[DISTRICT/UNIT SUPERVISOR]  
[DISTRICT/UNIT NAME]  
Waste Management Division  
\_\_\_\_ - \_\_\_\_ - \_\_\_\_

Enclosures

cc: Ms. JoAnn Merrick, DEQ  
[DISTRICT/UNIT STAFF]  
[OTHER WMD OR DEQ STAFF]  
[FILE]

Attachment 6; 111 FTO Trans 3 Letter

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

**{OWNER/OPERATOR REPRESENTATIVE}**  
**{OWNER/OPERATOR NAME}**  
**{MAILING ADDRESS}**

Dear {\_\_\_\_\_}:

SUBJECT: Consent Order, **{OWNER/OPERATOR NAME}**,  
**{FACILITY ID NUMBER}**

Enclosed please find a fully executed original of the Consent Order between **{OWNER/OPERATOR NAME}** and the Department of Environmental Quality (DEQ). The Consent Order became effective on **{DATE}**, the date it was signed by the Chief of the Waste Management Division. Please note that the civil penalty required by Paragraph { } of the Consent Order is due by **{DATE}**.

Sincerely,

JoAnn Merrick, Chief  
Enforcement Section  
Waste Management Division  
517-373-7938

Enclosure

cc: Mr. Frank Ruswick, DEQ  
cc/enc: **{DISTRICT/UNIT SUPERVISOR}**  
Ms. Evah Cole, DEQ  
**{OTHER WMD/DEQ STAFF}**  
**{FILE}**





## Attachment 8; 111 FTO Notice of Termination

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT DIVISION

In the matter of administrative proceedings  
against **[COMPANY NAME]**, a corporation organized  
under the laws of the State of **[STATE OF INCORPORATION]**  
and doing business at **[STREET ADDRESS]**,  
City of **[CITY NAME]**, County of **[COUNTY NAME]**,  
State of Michigan

WMD Order No. \_\_\_\_\_

EPA ID No. MID \_\_\_\_\_

## NOTICE OF TERMINATION

This Notice is issued pursuant to a request for termination submitted on **[DATE]** by **[REQUESTER'S NAME]** on behalf of **[COMPANY NAME (ABBREV. COMPANY NAME)]**, pursuant to Section **[ ]** of WMD Order No. \_\_\_\_\_. The request contained supporting information as required by Section **[ ]** of WMD Order No. 111-\_\_\_\_-\_\_\_\_. Review of this request and the supporting information indicates that **[ABBREV. COMPANY NAME]** has achieved compliance with the terms and conditions of the Order.

Therefore, effective the date of issuance noted below, WMD Order No. \_\_\_\_\_ is terminated. Termination of this Order does not release **[ABBREV. COMPANY NAME]** of liability for any violations of law not specifically resolved by the Order. **[ABBREV. COMPANY NAME]** is hereby put on notice that the Department of Environmental Quality may pursue civil and/or criminal prosecution, including the assessment of monetary fines, for any such violation of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.11101 - 324.11152, or other applicable law, as provided therein.

By: \_\_\_\_\_  
Jim Sygo, Chief  
Waste Management Division

Date: \_\_\_\_\_, 199\_\_

Attachment 9; 111 FTO Termination Letter

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

**{OWNER/OPERATOR REPRESENTATIVE}**  
**{OWNER/OPERATOR NAME}**  
**{MAILING ADDRESS}**

Dear :

SUBJECT: Termination of Consent Order WMD No. \_\_\_\_\_

Enclosed please find a Notice of Termination of Consent Order WMD No. \_\_\_\_\_  
between **[COMPANY NAME]** and the Michigan Department of Environmental Quality.  
This termination is effective **[DATE]**.

Thank you for your cooperation in resolving this matter.

Sincerely,

**[DISTRICT/UNIT SUPERVISOR]**

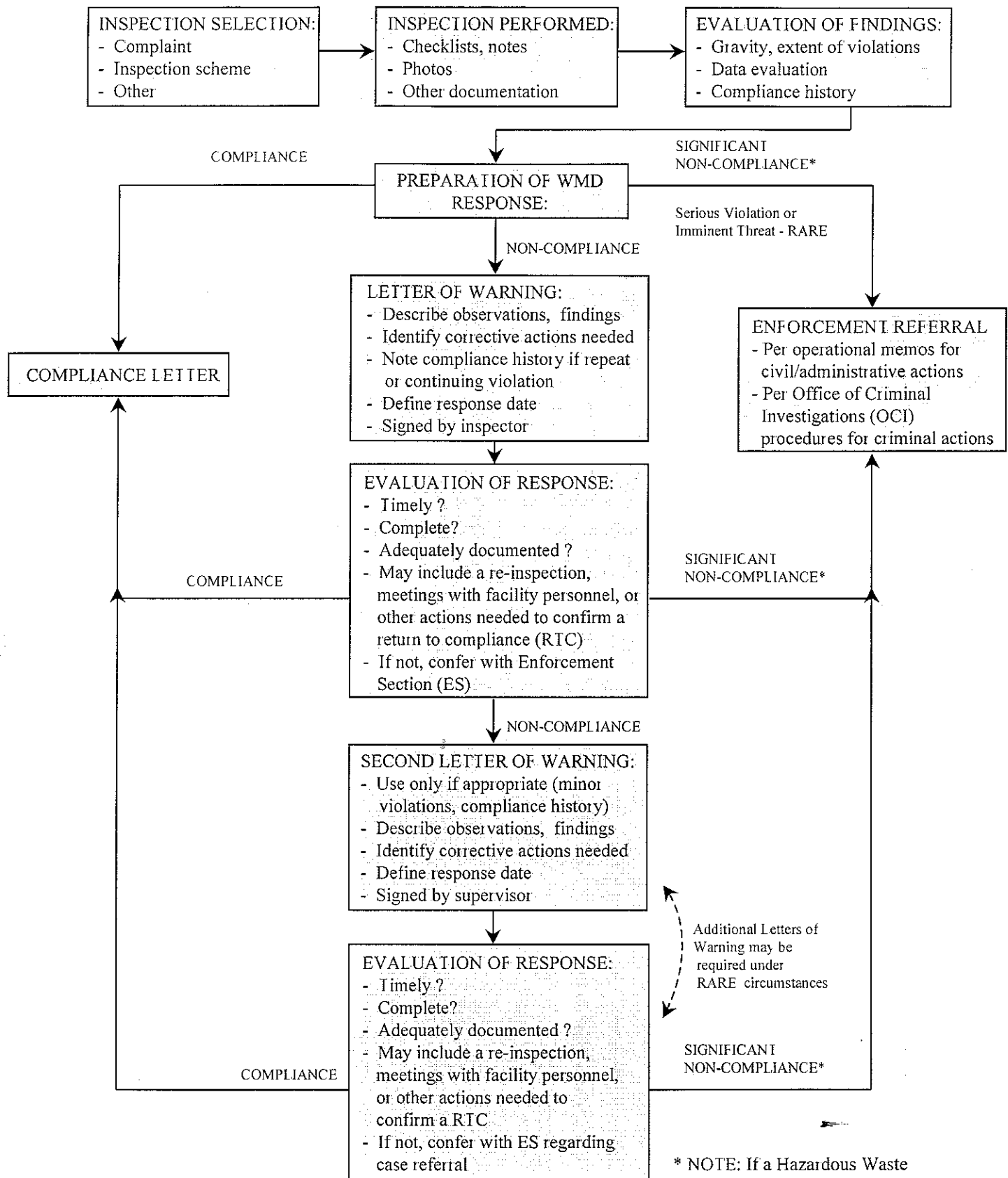
**[DISTRICT/UNIT NAME]**

Waste Management Division

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_

Enclosure

cc: Ms. JoAnn Merrick, DEQ  
**[DISTRICT/UNIT STAFF ]**  
**[FILE]**



\* NOTE: If a Hazardous Waste Program case, determinations of significant non-compliance (SNC) require notification of ES, EPA, and data entry via RCRIS.

**DRAFT FAST TRACK PROCEDURES CHECKLIST**

Facility Name: \_\_\_\_\_ ID: \_\_\_\_\_

Staff: \_\_\_\_\_ Supervisor: \_\_\_\_\_

Inspection Date: \_\_\_\_\_ Initiation Date: \_\_\_\_\_

		DUE DATE
1.	Inspector/unit staff obtains informal peer review of candidate fast-track case. Done ____\____\____. Due 1 + 5 working days	____\____\____
2.	Inspector/unit staff presents case to District/Unit Supervisor. Done ____\____\____	____\____\____
3.	District/Unit Supervisor or designated staff contacts other WMD units and other MDEQ Divisions. WMD ENF ____\____\____ GWPS ____\____\____ HWPS ____\____\____ EIS ____\____\____ SWQD ____\____\____ ERD ____\____\____ AQD ____\____\____ USTD ____\____\____ LWMD ____\____\____ DWRPD ____\____\____ Due 2. + 5 working days	____\____\____
4.	District/Unit Supervisor contacts WMD Enforcement Section Chief ____\____\____. Concurrence on fast-track obtained ____\____\____. Due 2. + 10 working days	____\____\____
5.	Enforcement Section staff enter case to tracking system and assign a project number. Project number: ____\____\____. Due 2. + 10 working days	____\____\____
6.	District/Program staff prepare draft consent order ____\____\____ and calculate proposed penalty \$ ____\____\____. Due 2. + 15 working days	____\____\____
7.	District/Unit Supervisor reviews draft order ____\____\____ and penalty calculation ____\____\____. Due 2. + 18 working days	____\____\____
8.	District/Program staff transmit draft order and penalty to Enforcement Section on date: ____\____\____. Due 2. + 20 working days	____\____\____
9.	Enforcement Section staff review and comment to District/Unit staff within 10 business days. Comments received on ____\____\____. AG review needed (y/n) ____\____\____. Due 2. + 30 working days	____\____\____
10.	District/Unit staff finalize and issue proposed order ____\____\____. Due 2. + 35 working days	____\____\____
11.	District/Unit staff make RCRIS entry ____\____\____	
12.	District/Unit staff negotiate order starting ____\____\____ with an escalation date of ____\____\____	

		DUE DATE
	___\___\___ Due 2. + 125 working days	___\___\___
13.	District/Unit staff submit proposed final order on ___\___\___ to WMD Enforcement Section Chief for approval on _____ AG approval required (y/n) _____	
14.	District staff prepare two originals of final order and send to respondent on ___\___\___	
15.	District/Unit staff receive signed order copies from respondent on ___\___\___ Due 14. + x working days	___\___\___
16.	District/Unit staff send signed copies to Enforcement Section on ___\___\___	
17.	Enforcement Section obtains Division Chief's signature on _____ and returns signed copies to District/Unit _____	
18.	District/Unit staff send one copy of the executed order to respondent on ___\___\___ and prepare a statement for Enforcement monthly report on ___\___\___	
19.	District/Unit staff make RCRIS entry _____	
20.	District/Unit staff prepare tracking outline and monitor order compliance. Conduct CSE inspections _____	
21.	Enforcement Section staff advise District/Unit staff of payments \$ _____ on ___\___\___ \$ _____ on ___\___\___	___\___\___ ___\___\___
22.	District/Unit staff review termination request _____ and conduct final CSE if appropriate on ___\___\___	
23.	District/Unit staff draft Notice of Termination (NOT) ___\___\___	
24.	Enforcement Section finalizes NOT, obtains Division Chief's signature and returns original to District/Unit _____	
25.	District/Unit staff issue NOT to respondent _____	
26.	District/Unit staff make RCRIS entry _____	

Appendix A; Penalty Instructions

Instructions for the Use of the 1990 RCRA Civil Penalty Policy in WMD Fast Track Consent Orders

Introduction

The assessment of civil penalties is a critical element in environmental enforcement actions. Such penalties serve to eliminate (or significantly reduce) the economic benefits realized through non-compliance and create significant deterrence from future non-compliance both on the part of the respondent and others who become aware of the assessment of those penalties. For the assessment of such penalties to be legally defensible, they must be calculated in a consistent fashion, commensurate with the nature and degree of non-compliance, and consistent with the strengths and/or weaknesses of the case. The 1990 United States Environmental Protection Agency Resource Conservation and Recovery Act (RCRA) Civil Penalty Policy (Policy) sets forth a detailed procedure for the calculation of penalties in RCRA enforcement cases.

The Michigan Department of Environmental Quality (MDEQ), Waste Management Division (WMD) is required, under the terms of its annual RCRA Workplans, to utilize the 1990 Civil Penalty Policy in calculating civil penalties in its enforcement actions. Although the WMD does not have administrative penalty authority under Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), the WMD has consistently sought civil penalties as a part of settlement of administrative enforcement actions on the basis of the authority provided in Section 11148 of the NREPA and the expectation that, if the matter were to proceed to litigation, civil penalties would be sought and obtained.

In the context of "Fast Track" enforcement efforts being brought in cases that would not otherwise be enforcement priorities, the proposed civil penalty must be conservatively calculated so as to create an incentive for quick settlement.

### Penalty Calculation Process

The Policy sets forth a detailed process for the calculation of proposed civil penalties. This process can be represented as follows:

$$\text{Proposed Penalty} = \text{Gravity-Based Component} + \text{Multi-Day Component} + \text{Economic Benefit} \pm \text{Adjustment}$$

In calculating a proposed civil penalty for any given violation, there are two components that must be determined. The first is what is referred to in the Policy as the “gravity-based” component and is calculated using the first matrix depicted on Table 1.

The gravity-based component is determined based on two factors: the potential for harm (either environmentally or to the integrity of the regulatory program) and the extent of deviation from the statutory or regulatory requirement. Each of these factors is classified as either “minor,” “moderate,” or “major” and the resulting cell in the matrix contains the gravity-based component of the penalty. For example, a violation classified as having a moderate potential for harm and a moderate extent of deviation (expressed as harm/extent, e.g., “moderate/moderate”) would have a gravity-based component of \$6,500. Note that in the context of Fast Track enforcement actions, violations with a “major” potential for harm will be rarely, if ever, encountered, as such “major” violations are generally sufficient to warrant referral to the WMD Enforcement Section for escalated enforcement.

The second component that must be determined is referred to as the “multi-day” or “daily” component. This component provides the means by which penalties are increased based on the duration of the violation and is related to the matrix cell assignments made in determining the gravity-based component as shown in the second matrix on Table 2.

Note that the application of the daily component is not mandatory for all violations. As can be seen from the matrix above, for violations classified as minor/minor, minor/moderate, and moderate/minor, the assessment of a daily component is discretionary. Similarly, for violations



classified as minor/major, moderate/moderate, and major/minor, the assessment of a daily component is presumed. For violations where the assessment of a daily component is discretionary, WMD staff should generally not assess a multi-day component except where the circumstances of a particular case make it necessary. For violations where the assessment of a daily component is presumed, WMD staff will generally include a daily component, except where individual case circumstances (e.g., very short duration of violation, poor documentation of duration of violation, etc.) make inclusion of the daily component problematic.

It is important to note that, in many instances, the daily component can dramatically increase the amount of the overall penalty for a given violation (e.g., continuing with the same example above, for a moderate/moderate violation with a documented duration of thirty days, the daily component alone would be \$7,500). Consequently, WMD staff must be conservative in identifying the duration of the violation and should generally use the actual number of days they have clearly documented the violation. Once the duration of the violation has been identified, that number is multiplied by the amount in the corresponding matrix cell and the result is added to the gravity-based component to obtain the penalty for that violation [continuing with the examples above, for a moderate/moderate violation: gravity-based component (\$6,500) + [duration of violation (30 days) x daily penalty from matrix (\$250)] = \$14,000].

This process is repeated for each violation or group of related violations. There are situations where groups of similar violations (e.g., container labeling, dating, etc.) can be combined for the purpose of calculating a single penalty for several related violations. This approach is useful where one act of non-compliance gives rise to multiple regulatory violations due to the interdependency of the regulations. (Note that this “lumping together” of violations is for penalty calculation purposes only. Each individual violation must be cited in letters of warning, notices of violation, or similar documents provided to the respondent.)

For the purposes of Fast Track enforcement actions, calculation of the economic benefit of non-compliance will typically not be performed. Such calculations rely on a complex computer model (known as the “BEN Model”) and are usually significant only for serious violations involving large avoided or delayed costs. Similarly, in the interest of consistency and simplicity, the mechanisms

provided in the Policy for upward and downward adjustment of penalties will typically not be used in Fast Track enforcement actions.

#### Documentation and Release of Information

In order to support a penalty proposed as part of a Fast Track enforcement settlement, WMD staff must include in the case file records sufficient to document how the proposed penalty was calculated. The case file must record all of the factual information and the judgments made by WMD staff in calculating the proposed penalty. Full documentation of the reasons and rationale for the penalty amount being sought will be important to appropriate and expeditious resolution of Fast Track enforcement actions. Generally, the case file should only contain final documents, not draft memoranda or other deliberative records. Worksheets to be used in documenting penalty calculations are provided as Appendices B - F. The WMD's efforts to obtain penalties through administrative enforcement actions are typically predicated on the expectation such actions will be escalated to litigation in the event timely and appropriate resolution is not achieved. Consequently, penalty calculation documentation discussing the rationale for the penalty is typically reviewed by Department of Attorney General staff and, as such, is considered to be subject to the Attorney-Client Privilege and, therefore, is not subject to release under the Freedom of Information Act. Nonetheless, respondents can reasonably expect WMD staff to explain the basis for penalties being sought. A summary worksheet (Appendix B) which outlines the penalty calculation, but does not include discussion of the rationale for the calculation, can be provided to the respondent as a means of explaining the penalty calculation.

#### Example

An example penalty calculation is provided (Appendix F) to illustrate the calculation of a proposed civil penalty in a hypothetical Fast Track enforcement case.

A copy of the Policy is enclosed for further reference. Any questions regarding the penalty calculation process should be directed to Enforcement Section staff.

Enclosure

Tables 1 and 2; Appendix A, Penalty Matrix

**PENALTY CALCULATION MATRIX: FAST TRACK CONSENT ORDERS**  
(Based on U S EPA 1990 RCRA Civil Penalty Policy)

**TABLE 1: GRAVITY-BASED PENALTY COMPONENT:** (All values midpoints)

		Extent of Deviation from Requirement		
		MAJOR	MODERATE	MINOR
Potential  For  Harm	MAJOR	\$22,500 <i>M</i>	\$17,500 <i>M</i>	\$13,000 <i>P</i>
	MODERATE	\$9,500 <i>M</i>	\$6,500 <i>P</i>	\$4,000 <i>D</i>
	MINOR	\$2,250 <i>P</i>	\$1,000 <i>D</i>	\$300 <i>D</i>

*M* = **Mandatory** Assessment of Multi-day Penalty Component  
*P* = **Presumed** Assessment of Multi-day Penalty Component  
*D* = **Discretionary** Assessment of Multi-day Penalty Component

**TABLE 2; MULTI-DAY PENALTY COMPONENT:** (All values per day minimums)

		Extent of Deviation from Requirement		
		MAJOR	MODERATE	MINOR
Potential  For  Harm	MAJOR	\$1,000	\$750	\$550
	MODERATE	\$400	\$250	\$150
	MINOR	\$100	\$100	\$100

Excerpted from: RCRA Civil Penalty Policy, October 1990, U.S. EPA

Appendix B; Penalty Summary

PENALTY SUMMARY

REGULATION APPLICABLE AT TIME OF VIOLATION. MAC CODE AND CORRESPONDING 40 CFR.	NATURE OF REQUIREMENT DATE OF VIOLATION	PROPOSED PENALTY
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
	GRAND TOTAL FOR PROPOSED PENALTY	\$

## Appendix C; Penalty Calculation Form

**ATTORNEY - CLIENT PRIVILEGED INFORMATION****Individual Violation Penalty Calculation**

Date: \_\_\_\_\_

Penalty Nos: \_\_\_\_\_

FACILITY: \_\_\_\_\_

REGULATION(S) VIOLATED : \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

DESCRIPTION OF VIOLATION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

1) GRAVITY-BASED \$ \_\_\_\_\_

a) POTENTIAL FOR HARM: \_\_\_\_\_

b) EXTENT OF DEVIATION: \_\_\_\_\_

2) MULTI-DAY PENALTY \$ \_\_\_\_\_

PENALTY \$ \_\_\_\_\_

NUMBER OF DAYS \_\_\_\_\_

a) MANDATORY \_\_\_\_\_

b) PRESUMED \_\_\_\_\_

c) DISCRETIONARY \_\_\_\_\_

\$ \_\_\_\_\_

Appendix D; Penalty Calculation Narrative Form

**ATTORNEY - CLIENT PRIVILEGED INFORMATION**

**Individual Penalty Calculation Narrative**

Date: \_\_\_\_\_

Penalty Nos.: \_\_\_\_\_

FACILITY: \_\_\_\_\_

REGULATION(S) VIOLATED AND DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.a) POTENTIAL FOR HARM: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.b) EXTENT OF DEVIATION: \_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.) MULTI-DAY AMOUNT: \$ \_\_\_\_\_ AND NUMBER OF DAYS: \_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Appendix E; Attorney-Client Penalty Summary

**PENALTY CALCULATION SUMMARY (Based on U.S. EPA RCRA Civil Penalty Policy, 1990)**

Facility: \_\_\_\_\_

Violations Cited	Gravity Amount	Daily Component (# of days) x (amt)	TOTAL PENALTY
_____ _____ _____ _____	\$ _____	+ ( _____ x \$ _____ )	= \$ _____
_____ _____ _____ _____	\$ _____	+ ( _____ x \$ _____ )	= \$ _____
_____ _____ _____ _____	\$ _____	+ ( _____ x \$ _____ )	= \$ _____
_____ _____ _____ _____	\$ _____	+ ( _____ x \$ _____ )	= \$ _____
_____ _____ _____ _____	\$ _____	+ ( _____ x \$ _____ )	= \$ _____
_____ _____ _____ _____	\$ _____	+ ( _____ x \$ _____ )	= \$ _____
TOTAL (ALL VIOLATIONS) = \$ _____			

## Appendix F-1; Example Pen Calc Summary

**PENALTY CALCULATION SUMMARY (Based on U.S. EPA RCRA Civil Penalty Policy, 1990)**Facility: D. BUSINESS WIDGETS, INC.

Violations Cited	Gravity Amount	Daily Component (# of days) x (amt)	TOTAL PENALTY
R299.9306(2)+(4) 40 CFR 266.34 40 CFR 265.173(a)	\$2,250.00	+ (        x \$        )	= \$2,250.00
R299.9305(1)(e) 40 CFR 262.33	\$ 300.00	+ (        x \$        )	= \$ 300.00
MCL 299.518 MCL 299.522	\$9,500.00	+ (        x \$        )	= \$9,500.00
	\$	+ (        x \$        )	= \$
	\$	+ (        x \$        )	= \$
TOTAL (ALL VIOLATIONS) = \$12,050.00			



## Appendix F-2; Example Penalty Summary

## PENALTY SUMMARY

REGULATION APPLICABLE AT TIME OF VIOLATION MAC CODE AND CORRESPONDING 40 CFR.	NATURE OF REQUIREMENT DATE OF VIOLATION	PROPOSED PENALTY
R299.9306(2) 40 CFR 262.34 R299.9306(4)(b)(i) 40 CFR 265.173(a)	Failed to label satellite waste accumulation containers; failed to store satellite containers closed  1-31-95	   \$2,250.00
R299.9305(1)(e) 40 CFR 262.33	Failed to maintain placards for the initial transporter  1-31-95	  \$ 300.00
Act 64 MCL 299.518 Act 64 MCL 299.522	Treating hazardous waste without a license  1-31-95	  \$9,500.00
		\$
		\$
		\$
		\$
		\$
		\$
	GRAND TOTAL FOR PROPOSED PENALTY	\$12,050.00

## Appendix F-3; Example Penalty Calc 1

ATTORNEY - CLIENT PRIVILEGED INFORMATION

## Individual Violation Penalty Calculation

Date: 1-32-95Penalty Nos.: 1FACILITY: D. BUSINESS WIDGETS, INC.

REGULATION(S) VIOLATED :

R299.9306(2), 40 CFR 262.34, R299.9306(4)(b)(i), 40 CFR 265.173(a)DESCRIPTION OF VIOLATION: Failed to label satellite waste accumulation  
containers; failed to store satellite containers closed.1) GRAVITY-BASED \$ 2,250.00a) POTENTIAL FOR HARM: Minorb) EXTENT OF DEVIATION: Major

2) MULTI-DAY PENALTY \$ \_\_\_\_\_

PENALTY \$ \_\_\_\_\_

NUMBER OF DAYS \_\_\_\_\_

a) MANDATORY \_\_\_\_\_

b) PRESUMED \_\_\_\_\_

c) DISCRETIONARY \_\_\_\_\_

\$ 2,250.00

Appendix F-4; Example Penalty Narr 1

ATTORNEY - CLIENT PRIVILEGED INFORMATION

Individual Penalty Calculation Narrative

Date: 1-32-95

Penalty Nos : 1

FACILITY: D. BIZNESS WIDGETS, INC.

REGULATION(S) VIOLATED AND DESCRIPTION: see front page

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.a) POTENTIAL FOR HARM: Minor

Did not close and label satellite containers, but no evidence that  
subsequent waste management procedures posed a problem  
\_\_\_\_\_  
\_\_\_\_\_

1.b) EXTENT OF DEVIATION: Major

Did not comply with satellite container regulations  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.) MULTI-DAY AMOUNT: \$      AND NUMBER OF DAYS: 1

One day of violation verified  
\_\_\_\_\_  
\_\_\_\_\_

## Appendix F-5; Example Penalty Calc 2

ATTORNEY - CLIENT PRIVILEGED INFORMATION

## Individual Violation Penalty Calculation

Date: 1-32-95Penalty Nos.: 2FACILITY: D. BUSINESS WIDGETS, INC.REGULATION(S) VIOLATED : R299.9305(1)(e), 40 CFR 262.33DESCRIPTION OF VIOLATION: Failure to maintain placards for the initial  
transporter

- |    |                                      |                  |
|----|--------------------------------------|------------------|
| 1) | GRAVITY-BASED                        | \$ <u>300.00</u> |
|    | a) POTENTIAL FOR HARM: <u>Minor</u>  |                  |
|    | b) EXTENT OF DEVIATION: <u>Minor</u> |                  |
| 2) | MULTI-DAY PENALTY                    | \$ _____         |
|    | PENALTY                              | \$ _____         |
|    | NUMBER OF DAYS                       | _____            |
|    | a) MANDATORY                         | _____            |
|    | b) PRESUMED                          | _____            |
|    | c) DISCRETIONARY                     | _____            |
|    |                                      | \$ <u>300.00</u> |

## Appendix F-6; Example Penalty Narr 2

## ATTORNEY - CLIENT PRIVILEGED INFORMATION

## Individual Penalty Calculation Narrative

Date: 1-32-95Penalty Nos.: 2FACILITY: D. BIZNESS WIDGETS, INC.REGULATION(S) VIOLATED AND DESCRIPTION: R299.305(1)(e), 40 CFR 262.33

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1.a) POTENTIAL FOR HARM: MinorMost transporters will have placards so doubtful waste would be actually  
transported improperly

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1.b) EXTENT OF DEVIATION: MinorIf waste containers were otherwise labeled, etc., to comply with Part 111 and  
MDOT regulations, it is a minor deviation not to have placards

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2.) MULTI-DAY AMOUNT: \$                      AND NUMBER OF DAYS: 1One day of violation documented

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## Appendix F-7; Example Penalty Calc 3

ATTORNEY - CLIENT PRIVILEGED INFORMATION

## Individual Violation Penalty Calculation

Date: 1-32-95Penalty Nos.: 3FACILITY: D. BUSINESS WIDGETS, INC.REGULATION(S) VIOLATED : Act 64 MCL 299.518 + 299.522DESCRIPTION OF VIOLATION: Treating hazardous waste without a license1) GRAVITY-BASED \$ 9,500.00a) POTENTIAL FOR HARM: Moderateb) EXTENT OF DEVIATION: Major2) MULTI-DAY PENALTY \$ ---PENALTY \$           NUMBER OF DAYS 1a) MANDATORY           b) PRESUMED           c) DISCRETIONARY           \$ 9,500.00

Appendix F-8; Example Penalty Narr 3

ATTORNEY - CLIENT PRIVILEGED INFORMATION

Individual Penalty Calculation Narrative

Date: 1-32-95

Penalty Nos : 3

FACILITY: D. BIZNESS WIDGETS, INC.

REGULATION(S) VIOLATED AND DESCRIPTION: MCL 299.518 + MCL 299.522

transporting a hazardous waste without a license

1.a) POTENTIAL FOR HARM: Moderate

Treating hazardous waste without prior licenses or in compliance with interim status regulations may pose a significant potential for harm to regulatory programs and the environment but since no evidence that actual harm was caused or that it was not managed properly after hearing it is moderate.

1.b) EXTENT OF DEVIATION: Major

Did not have licenses/interim status to conduct treatment - this could change to moderate if this is a treatment method that will be okay for generators pursuant to rules being drafted/promulgated

2.) MULTI-DAY AMOUNT: \$ -- AND NUMBER OF DAYS: --

One day of violation verified